

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

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VICKY JONES, an individual;

Plaintiff,

VS.

UNITED STATES OF AMERICA,

Defendant,

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DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

Civil Action No.:

3:05cv420-F

DEMAND FOR JURY TRIAL

COMPLAINT

The Plaintiff is an adult resident of the State of Alabama. The Defendant, The United States of America employed James Funk, and he was acting in the line and scope of his employment with The United States Army at the time of the events made the subject of this lawsuit.

FACTUAL BACKGROUND

On or about April 13, 2003, the Plaintiff, Vicky Jones, was involved in an automobile accident with James Funk. Apparently, Mr. Funk was acting in the line scope of his employment with the United States Army at the time of the accident. The lawsuit was filed in the Circuit Court of Lee County on July 25, 2003. Subsequent to that, on September 17, 2003, the Defendant, The United States of America, filed a Notice of Removal to the United States District Court for the Middle District of Alabama, Eastern Division, based upon Funk's employment by the United States Army at the time of the accident. Plaintiff consented to the removal and consented to the substitution of the United States of American in place of Mr. Funk as the proper party Defendant.

Subsequent to that, the United States of America filed a Motion to Dismiss the claims, to which the Plaintiff consented, on November 7, 2003. After Plaintiff's counsel consented to the dismissal without prejudice, Pamela G. Patterson, with the office of Staff Advocate, contacted Plaintiff's counsel concerning the administrative process to follow. Subsequent to that telephone conversation, she forwarded to Plaintiff's counsel a claim for damage, injury or death, to be completed and returned to her at the office of the Staff Advocate in Fort Benning GA. Plaintiff's counsel received the form and sent it to the Plaintiff, Vicky Jones, on January 21, 2004 with instructions to sign it and return it to Plaintiff's counsel immediately. Thereafter, Plaintiff's counsel forwarded the form to Mrs. Patterson immediately upon receiving it from Vicky Jones. Unfortunately, the cover letter accompanying the form was not preserved on computer or hard copy. However, despite the non-existence of a cover letter, Plaintiff's counsel is not in possession of an original completed form which clearly indicates that the original form was sent. On August 19, 2004, Plaintiff's counsel sent a letter to Mrs. Patterson asking for the status of the claim. In that letter, Plaintiff's counsel specifically stated that the form was sent in January 2004. In response, Mrs. Patterson called the Plaintiff's counsel's assistant to advise that she did not have the form and also that Lee County was no longer her jurisdiction and that anything from the Plaintiff from now on needed to be sent the Judge Advocate in Fort Rucker. Subsequently, Plaintiff sent a series of letters to the commander headquarter's in Fort Rucker, AL, trying to explain what had occurred. Specifically, in a letter dated October 6, 2004, Plaintiff's counsel explained that the format cover letter was used by counsel's assistant to send the letter dated August 19, 2004, the body of the cover letter itself was not preserved. In response, Plaintiff's counsel received a November 8, 2004 denial letter stating that Plaintiff's claim had not been filed within the two years statute of limitations. In that letter, Plaintiff's counsel was advised that suit

could be filed in the appropriate United District Court within six months of that letter.

Therefore, this lawsuit is filed in response to the denial letter received by the Department of the Army on November 8, 2004.

DAMAGES

The Plaintiff received personal injuries in a car wreck, and is now being denied the rights to claim damages since the United States either mis-placed or failed to file the Plaintiff's claim form, which was sent prior to the running of the statute of limitations.

COUNT ONE

Federal Tort Claims Act

1. Plaintiff alleges damages pursuant to the Federal Tort Claims Act, 28 USC §§ 1346 (B); 2671-2680 (1998) "FTCA", as amended by the Federal Employees Liability Reform and Tort Compensation Act of 1988 § 5, Pub. L. No. 100-694, 102 Stat. 4563 (1998), and 28USC Section 28VSC § § 2679 (b) 1.


WHEREFORE, Plaintiff seeks damages pursuant to the above titled Federal Statutes.

COUNT TWO

1. Plaintiff seeks damages pursuant to the claim denial issued by the United States of America on November 8, 2004, claiming that Plaintiff was not entitled to damages based upon the statute of limitations.
2. As stated in the factual section of this Complaint, Plaintiff mailed her claim form to the United States to be filed within the two years statute of limitations; however, the United States either lost or failed to file the claim form and has now denied the Plaintiff's claim based upon the statute of limitations.

WHEREFORE, Plaintiff seeks damages for the denial of her claim issued by the United States on November 8, 2004.

Respectfully submitted,


Richard F. Horsley

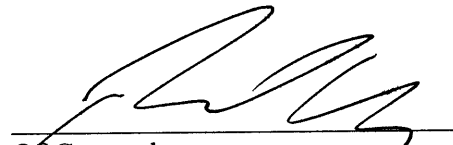
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TRIAL COUNSEL:

Richard F. Horsley

Plaintiff demands a trial by a struck jury in this cause.


Of Counsel

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Defendant's Address

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